

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Federal-State Joint Board on
Universal Service:
Promoting Deployment and
Subscribership in Unserved
and Underserved Areas, Including
Tribal and Insular Areas

CC Docket No. 96-45

REPLY COMMENTS OF COOK INLET REGION, INC.

Cook Inlet Region, Inc. ("CIRI") is pleased to submit these reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in this proceeding. CIRI is an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* CIRI is owned by 6,900 Alaska Native shareholders of Eskimo, Indian, and Aleut descent. Because of our long involvement with Native American issues and our Native American ownership, we have a longstanding affinity with the issues discussed by the Commission in the Further Notice.

CIRI is, moreover, the ultimately controlling entity in Personal Communication Service ("PCS") partnerships that provide service in areas that encompass a number of tribal

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lands.¹ In Tulsa, Oklahoma for example, where the CIRC partnership with VoiceStream became the first designated entity in the nation to launch service, CIRC's partnership provides service to a number of Indian lands. In Seattle, Washington the licensing area for CIRC's partnership includes the tribal lands for the Makah, Quinult, Tuialip, Colville, and Yakama tribes. In Phoenix, Arizona, similarly, the licensing area for CIRC's partnership includes a substantial number of tribal lands. Because CIRC provides service in a number of wireless areas in which tribal lands are an integral part of the public that we serve, we are deeply concerned with the nature and quality of telecommunications services available to Native Americans. Moreover, because of CIRC's ownership by Alaska Natives, CIRC has a deep and abiding interest in bringing modern telecommunications services to unserved and underserved areas of Alaska. In these reply comments, CIRC wishes to address two discrete issues: the definition of "tribal lands" and the possibility of wireless carriers qualifying for universal service support funding.

¹ A list of basic trading areas ("BTAs") for CIRC's PCS partnerships and tribes that control land wholly or partially in those BTAs follows:

<u>BTAs</u>	<u>Tribes</u>
Arizona	Kaibab, Havasupai, Hualapai, Navajo, Hopi, Cocopah, Yavapai Apache, Yavapai, Maricopa, Tohono O'odham, Pascua Yaqui
Louisiana	Tunica Biloxi, Apache Choctaw
Nebraska	Santee, Winnebago
Oklahoma	Kaw Nation of Oklahoma, Ponca Tribe, Pawnee Tribe of Okla., Iowa-Sac & Fox, Muscogee (Creek) Nation, Cherokee Nation of Okla., Miami Tribe, Seneca-Cayuga Tribe of Okla., Ottawa Tribe of Okla., Peoria Tribe of Okla., Wyandotte Tribe, QuaPaw Tribe of Okla., Eastern Shawnee Tribe, United Keetowah Band
South Dakota	Standing Rock, Cheyenne River
Washington	Makah, Quinult, Tuialip, Colville, Yakama

Tribal Lands. In the Further Notice the Commission sought to define "tribal lands" to identify areas in which it seeks comment on whether it should modify its federal universal service policies and rules because of the principles of Indian sovereignty.² Additionally, the Commission stated in another proceeding regarding extending wireless telecommunications services to tribal lands that it intends to define tribal lands in that proceeding consistently with the definition adopted in this proceeding.³ Neither of the Commission's proposed definitions of tribal lands would include Native American lands in Alaska. CIRC applauds the Commission's sensitivity to the trust relationship between the federal government and Indian tribes, to tribal sovereignty, and to tribal self-determination. However, CIRC is concerned that adopting either of the proposed definitions of tribal lands – land within the limits of any Indian reservation or lands defined by the statutory term "Indian country"⁴ – will unnecessarily cabin the Commission's efforts to extend telecommunications services to all areas where Native Americans reside.

Admittedly, the definition of Indian country as used by the Bureau of Indian Affairs ("BIA"), which is the broader of the two proposed definitions, is not broad enough to encompass Native American lands in Alaska.⁵ In this proceeding, the Alaskan Rural Coalition ("ARC") commented that it believed Alaska Native Regional Corporation lands do not need to

² Further Notice of Proposed Rulemaking, *In re Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, FCC 99-104, ¶ 50 (rel. Sept. 3, 1999) ("Further Notice").

³ Notice of Proposed Rulemaking, *In re Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, FCC 99-204, ¶ 1 n.2 (rel. Aug. 18, 1999) ("Wireless Notice").

⁴ Further Notice ¶ 51.

⁵ See *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998) (concluding that Alaska tribal lands are not within definition of Indian country found in 18 U.S.C. § 1151).

be designated as tribal lands for universal service funding.⁶ ARC based this conclusion on its contention that the Commission believes that tribal lands are unserved, which led the Commission to conclude that it should alter universal service rules for tribal lands.⁷ ARC claims that Alaska communities "are well served with state of the art, digital local service."⁸

However, the State of Alaska presented compelling evidence in its comments that, despite significant efforts by carriers, subscribership rates remain low in rural Alaska.⁹ Even if Native American lands in Alaska are jurisdictionally different enough to preclude their inclusion in the definition of tribal lands,¹⁰ Alaska Natives experience the same geographic and economic problems in gaining access even to basic telecommunications services that the Commission and others have identified regarding Indians on reservations. As the State of Alaska makes clear, Alaska Natives are entitled to participate in programs designed to assist other Native Americans as a matter of fundamental national policy.¹¹ Rather than provide incentives to increase subscribership based on where an Indian lives, the Commission should focus on tribal status. One statutory definition of "Indian tribe" correctly includes "any Alaska Native village or

⁶ See Alaska Rural Coalition Comments at 21 ("ARC Comments"); see also Salt River Pima-Maricopa Indian Community and the National Tribal Telecommunications Alliance Comments at 5-9 (contending that "tribal lands," "reservation," and "Indian Country" should be interchangeable) ("SRPMI Comments").

⁷ See ARC Comments at 21.

⁸ *Id.*

⁹ See State of Alaska Comments at 6-7 (citing data of United Utilities, one of rural Alaska's largest LECs, that subscribership is 81%, much less than national rate of 94%).

¹⁰ As the comments of the State of Alaska explain, because the Regulatory Commission of Alaska has jurisdiction over tribal lands in the state, three of the FCC's proposals – regarding (1) whether the FCC or a State Commission should designate ETCs; (2) whether the FCC or a State Commission should designate carriers to provide what would otherwise be intrastate service in unserved area; and (3) the provision of additional federal support under the Lifeline program where a state lacks jurisdiction for its own Lifeline program – have no application in Alaska. See *id.* at 14.

¹¹ See *id.* at 15-16.

regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 450b(e).

Consequently, should the Commission adopt a narrow definition of tribal lands, it nonetheless should adapt any programs that specifically benefit tribal lands to benefit Indian tribes, including Alaska Natives, as well.¹²

Wireless Carriers and Universal Service Support. As nearly all commenters agree, one impediment to bringing telecommunications services to unserved, underserved, tribal, and insular areas is the relatively small number of potential customers living at great distances from populated areas. People in these areas have been the last to be served in large part because it is not economic to bring service to them. In many cases, wireless telephony offers a cost-effective alternative to wireline service. Still, as many wireless industry commenters emphasized, wireless carriers will need support funds to bring telephone services to high cost areas at affordable rates.¹³ "Obtaining that support in turn depends on obtaining ETC [Eligible Telecommunications Carrier] status, and on having rules that do not discriminate against wireless providers."¹⁴

¹² See *id.* at 16-17; see also United States Telecom Association and the National Exchange Carrier Association, Inc. Comments at 3 ("The Commission should apply the proposals set forth in the *FNPRM* to *all* high service cost areas, not just tribal and insular areas.").

¹³ See, e.g., Bell Atlantic Mobile Comments at 4-6 ("BAM Comments"); Cellular Telecommunications Industry Association Comments at 3 ("CTIA Comments"); Dobson Communications Corp. Comments at 2 ("Dobson Comments"); Qualcomm Comments at 5-6; Smith Bagley Comments at 3-4; United States Cellular Corp. Comments at 3 ("USCC Comments"); Western Wireless Corp. Comments at 7-8 ("Western Wireless Comments").

¹⁴ BAM Comments at 6.

As Bell Atlantic Mobile and Western Wireless have made clear, several states have thrown up substantial hurdles to wireless carriers seeking to participate in universal service programs.¹⁵ CIRC agrees with the commenters who assert that Section 214(e)(6) unequivocally give the Commission authority to designate ETCs to serve tribal lands, which are not subject to state jurisdiction.¹⁶ Furthermore, CIRC agrees with the commenters that contend that Section 214(e)(6) is broad enough to permit the Commission to designate wireless carriers as ETCs, which in turn enables them to participate in universal service programs.¹⁷ The only way to bring uniformity, consistency, and predictability to ETC designation for wireless carriers is for the Commission to establish its jurisdiction over the process when states impede wireless participation or states refuse to exercise jurisdiction.

CIRC also agrees that the Commission's approach to designation of ETC status should be overtly technology-neutral.¹⁸ Although one goal of universal service support is to be technology neutral, the reality is that federal rules as well as several states' regulations contain landline bias.¹⁹ CIRC thus agrees with Bell Atlantic Mobile regarding the Commission's rules that:

¹⁵ See BAM Comments at 6-7; *see also* Western Wireless Comments in CC Docket No. 99-266 at 4 n. 10 (Nov. 9, 1999).

¹⁶ See, e.g., AMSC Subsidiary Corp. Comments at 7-8 ("AMSC Comments"); BAM Comments at 10-11; Western Wireless Comments at 5-7.

¹⁷ See, e.g., AMSC Comments at 7-9; BAM Comments at 11-16; CTIA Comments at 4-6; Dobson Comments at 5-6.

¹⁸ See, e.g., BAM Comments at 20; CCI International N.V. Comments at 3-4 ("CCI Comments"); Dobson Comments at 5; Motorola and Iridium North America Comments at 7-13 ("Motorola Comments"); Qualcomm Comment at 9-10; USCC Comments at 10.

¹⁹ See BAM Comments at 10-11.

- (1) Section 54.7 should not require wireless carriers, which are not rate-regulated, to segregate universal service dollars from other revenues;
- (2) the Commission should reject any prescribed amount of usage under Section 54.101(a)(2) (Core services) to avoid micromanaging the process;
- (3) the Commission should clarify that, in the wireless context, "free" in Section 54.101(a)(2) means no additional charge beyond the customer's contracted-for package of minutes;
- (4) the Commission should alter Section 54.307(4) (High cost support) to eliminate the zero sum game between ILECs and competitive ETCs to account for competitive ETCs attracting new customers;
- (5) the Commission should clarify "toll limitation" in the Lifeline program (Sections 54.400(d), 54.101(a)(9)) to accommodate prepaid wireless services;
- (6) the Commission should interpret Section 54.401(c)'s no deposit rule to accommodate prepaid wireless service;
- (7) the Commission should not require state approval of a \$1.75 reduction as a condition of additional federal Lifeline support for wireless carriers under Section 54.403(a), an approval which assumes the carrier is price-regulated;
- (8) the Commission should replace "residential" and "connection" with "consumer" and "service," respectively, in Sections 54.403(a), 54.411(a)(1), and 54.411(c) to eliminate landline-based concepts; and
- (9) the Commission should not dictate to wireless carriers what is the "lowest" rate under Section 54.403(b), when the "lowest" rate is a flexible concept in the wireless context.²⁰

The Commission can further the stated goal of technological neutrality by structuring and interpreting its rules in ways that recognize a shift from a wholly land-based telecommunications system to one in which wireless carriers participate on equal footing.

²⁰ See BAM Comments at 20-25.

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For these reasons, CIRI wholeheartedly supports specific, tailored incentives to bring the promise of universal service to those living in unserved, underserved, tribal, and insular areas including Alaska Natives. CIRI also supports initiatives that will aid wireless carriers to compete on equal footing with wireline carriers to serve currently unserved areas.

Respectfully submitted,

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January 19, 2000

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